**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 16254 of 2004**

**For Approval and Signature:**

**HON'BLE MR.JUSTICE K.M.MEHTA**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**HINGLOT VIBAG KELVANI MANDAL & 2 - Petitioner(s)**

**Versus**

**SALIM MAHMAD PATEL DUDHWALA & 3 - Respondent(s)**

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**Appearance :**

MR DHAVAL D VYAS for Petitioner No(s).: 1,2,3.
MR MM SAIYED for Respondent No: 1,2.
MS FALGUNI PATEL, AGP for Respondent No: 3.
RULE SERVED BY DS for Respondent No(s).:4.

MR MUKESH PATEL, AGP for Charity Commissioner.

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**CORAM : HON'BLE MR.JUSTICE K.M.MEHTA**

**Date : 20/07/2005**

## ORAL JUDGMENT

1. Hinglot Vibhag Kelvani Mandal and others, petitioners, have filed this petition under Article 226 and 227 of the Constitution of

India with a prayer that this Court may be pleased to issue a writ of certiorari or any other writ, order or direction, quashing and setting aside the order dated 30th November, 2004, passed by the learned Joint Charity Commissioner in Judicial Misc. Application No.37 of 2004. The said writ petition was filed on 14th December, 2004.

2. This Court passed the order on 17.12.2004 and issued notice and thereafter the Court has admitted the matter on 28.12.2004 and also granted interim relief to the effect that during the pendency of the aforesaid petition pleased to stay the implementation, execution and operation of the order dated 30.11.2004 passed by the Joint Charity Commissioner in Judicial Misc. Application No.37 of 2004. The Court observed that it will be open for the respondents to challenge the order of DEO before the appropriate authority.

3. Being aggrieved and dissatisfied with the said order, respondent No.1 – original petitioner Shri Salim Mahmad Patel

Dudhwala has filed a Letters Patent Appeal being LPA No.5 of 2005 before this Court. When the matter was heard by Division Bench of this Court (Coram: M.S.Shah & D.H.Waghela, JJ.), the Division Bench was pleased to dispose of the said LPA with following directions:

> "(i) The Assistant Charity Commissioner, Bharuch shall hear and decide Change Report Nos.79 and 80 of 2004 as expeditiously as possible and preferably within three weeks from today i.e. By 10th February 2005;
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> (ii) The learned Single Judge hearing Special Civil Application No.16920 of 2004 shall hear the matter for admission/interim relief within one month from today.
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> (iii) Depending on the outcome of the decision of the Assistant Charity Commissioner in the aforesaid Change Reports, the learned Single Judge will pass appropriate interim orders in Special Civil Application

No.16254 of 2004;

(iv) Till the learned Single Judge passes appropriate orders of interim relief or otherwise in Special Civil Application No.16254 of 2004, as indicated above, there is no ad-interim stay of the directions given by the learned Joint Charity Commissioner as contained in the judgment dated 30.11.2004 directing the Assistant Charity Commissioner to hold certain inquiries as mentioned in the said judgment.

(4) It is clarified that we have not gone into the merits of any of the disputes between the parties nor have we passed any order prohibiting respondent Nos.2 to 4 from acting as trustees, subject to appropriate orders which the learned Single Judge may pass hereafter."

4. In view of the Division Bench particularly direction No.2, this matter was placed for hearing before this Court.

5. The facts giving rise to this petition are as under:-

5.1 The petitioner No.1 is a trust registered under the provisions of Bombay Public Trusts Act (hereinafter referred to as “the said Act”), and at the relevant time, petitioner No.2 – Master Adam Ismail Gani and petitioner No.3 – Ismail Yusuf Patel they were trustees of the said trust since year 1965.

5.2 The petitioners thereafter filed a Scheme Application before the Joint Charity Commissioner being Application No.13/99. The said application was subsequently transferred to Surat and was renumbered as 40/2001 and which is still pending.

5.3 It is the case of the petitioners that the term of the petitioner as trustees was to end in the year 2002 which was continued upto that date. It is the case of the petitioners that by the Resolution of 2002, it was decided to continue existing trustees for the term of five years. However, it was alleged that through over sight the said resolution of 2002 was not submitted to the

office of the Charity Commissioner for making appropriate changes in Public Trust Register (PTR). With a view to see that the aforesaid fact is corrected, a General Body of the trust has passed another resolution on 23.5.2004 where it was resolved to extend the term of the petitioners including the newly added trustees since two of the trustees had died, for a period of five years. A copy of the said resolution has been produced at page 18 to 24 in the petition.

5.4 Pursuant to the aforesaid resolution, the trustees had filed a Change Reports No.79 and 80 of 2004 which was pending before the Assistant Charity Commissioner, Surat, at that time.

5.5 From the record it appears that Shri Salim Mahmad Patel Dudhwala – respondent No.1 herein and Shri Ilias Ismail Adam – respondent No.2 herein filed an application being Application No.37 of 2004 under Section 41-A of the said Act with a prayer for (i) restraining the petitioners from appointing the Principal till the disposal of the Scheme Application No.40/2001, (ii)

restraining the petitioner Nos.2 and 3 from performing as trustees, (iii) to part with all the information relating to the trust and also restraining the petitioner Nos.2 and 3 from taking up any new activities.

5.6 The petitioners No.2 and 3 had filed a detailed reply to the said application. However, the learned Joint Charity Commissioner, Surat by its order dated 30.11.2004 allowed the application filed by respondents No.1 and 2 and restrained the District Education Officer from granting NOC and if given, not to appoint the Principal or to allow him to resume the duties and further directing personal costs to the petitioners No.2 and 3.

5.7 Being aggrieved and dissatisfied with the aforesaid order of the Joint Charity Commissioner, as indicated above, the petitioners had filed present petition somewhere in December 2004 challenging the aforesaid order of the Joint Charity Commissioner before this Court.

6. On behalf of respondents No.1 and 2, Mr.M.M.Saiyed,

learned advocate has appeared, on behalf of District Education Officer – respondent No.3, Ms.Falguni Patel, learned AGP appeared and for respondent No.4 though served, he has not appeared. I have requested to Mr.Mukesh Patel, learned AGP to assist the Court on behalf of Assistant Charity Commissioner, and he has willingly accept the request of this Court to appear on behalf of Assistant Charity Commissioner.

7. It may be noted that during the pendency of petition, the respondent No.1 – Shri Salim Mahmad Patel Dudhwala has filed affidavit-in-reply before this Court on 24th December, 2004. Mr.Saiyed, learned advocate for the respondents No.1 and 2 has also made certain submissions in this behalf. However, before I consider the merits of the matter, Mr.Saiyed, learned advocate has pointed out to this Court that pursuant to the Change Reports filed by petitioners, the Assistant Charity Commissioner has decided the Change Reports by its order dated 10th February, 2005.

8. It may be noted that by the Change Reports, the trustees had decided to delete 9(nine) persons namely; (i) Ismail Yusuf Patel, (ii) Musabhai Vali Tabassum, (iii) Munshi Mahmad Musa, (iv) Umarji Ahmed Bhaiji, (v) Ibrahim Ali Suleman, (vi) Haji Ibrahim Adam Musa, (vii) Ahmed Musa Patel, (viii) Haji Abdullah Hafeji and (ix) Isabhai Ismail Patel.

9. As per the resolution dated 23rd May, 2004, the trustees have also decided to include five new persons to be appointed. The said application was considered by the Assistant Charity Commissioner dated 10.2.2005 pursuant to the order of the Division Bench which I have referred earlier in this behalf. The Assistant Charity Commissioner has deleted the names of two persons namely; Musabhai Vali Tabassum and Ahmed Musa Patel, who have died during the pendency of the proceedings. However, according to Charity Commissioner, other seven persons will continue as a trustees of the said trust. However, according to Charity Commissioner, five persons who sought to be added, their names were not included and, therefore, they

cannot be termed as trustees of the said trust.

10. I have heard Mr.Dhaval D.Vyas, learned advocate for the petitioners and Mr.M.M.Saiyed, learned advocate for the respondents No.1 and 2 at length. As this petition is filed against the interim order of the Charity Commissioner, this Court is of the view that against the interim order of quasi-judicial, it will not be proper for this Court to pass order because the authority is likely to hear and pass final order under Section 41-A of the said Act, and also the subsequent event which I have considered, if following directions are issued, the same may be in the interest of justice:

(i) The learned Joint Charity Commissioner, Surat, will hear Judicial Misc. Application No.37 of 2004 and decide the same in accordance with law without being influenced by the order passed earlier by the Joint Charity Commissioner dated 30.11.2004. It will be open for the petitioners as well as for the respondents to file

their statements and also lead evidence both oral and documentary evidence, and after hearing respective parties, it will be open for the Joint Charity Commissioner, Surat, to decide the same in accordance with law.

(ii) I have been informed that against the order of the Assistant Charity Commissioner dated 10.2.2005, an appeal has been filed being Appeal No.77 of 2005, the Joint Charity Commissioner will also hear and decide Appeal No.77 of 2005 against the order dated 10.2.2005. Mr.Saiyed, learned advocate has pointed out that against the order dated 10.2.2005, the parties have not obtained any interim order and said fact the Joint Charity Commissioner will also consider while hearing the appeal finally in this behalf.

(iii) The petitioners have also stated that the petitioners had filed Scheme Application No.13/99 (which is

renumbered as 40/2001). The learned Joint Charity Commissioner is also further requested to hear and decide the Scheme Application No.40/2001 in accordance with law even without being influenced by the order of this Court.

(iv) The learned Joint Charity Commissioner, Surat, therefore hear three matters together i.e. Scheme Application No.40 of 2001, Appeal No. 77 of 2005 and Judicial Misc. Application No.37 of 2004 together and pass the order in accordance with law.

11. It may be noted that during the pendency of the proceedings, the trustees who have worked, they have worked as per the Division Bench order purely interim and ad-hoc arrangement and therefore whatever decisions have been taken, their all decisions are ad-hoc and temporary in nature and whatever decisions taken by the existing trustees will be subject to the decision of the Joint Charity Commissioner and as well

as any appointment made by them will be subject to the decision of the DEO in this behalf. The learned Joint Charity Commissioner is requested to dispose of the same, as indicated above, by 30th November, 2005.

12. With the aforesaid observations and directions, this petition is disposed of with no order as to costs. Rule is discharged.

( K.M. Mehta, J. )

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